

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

CASTELLINI COMPANY, LLC,)
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Plaintiff,)
)
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v.)
)
PIC'S PRODUCE, INC.,)
JOSEPH PICHICHERO,)
JILL ELLIS,)
JAMES PICHICHERO, and)
JEFFREY PICHICHERO,)
Defendants.)

CASE NO. 1:22-cv-285

JUDGE MICHAEL R. BARRETT

DEFAULT JUDGMENT AGAINST DEFENDANTS PIC'S PRODUCE, INC., JOSEPH PICHICHERO, JILL ELLIS, JAMES PICHICHERO AND JEFFREY PICHICHERO

This cause came before the Court on Plaintiff Castellini Company, LLC's ("Plaintiff" or "Castellini") Motion for Default Judgment with incorporated memorandum in support ("Motion") against Defendants Pic's Produce, Inc., Joseph Pichichero, Jill Ellis, James Pichichero and Jeffrey Pichichero (collectively "Defendants"). Also before the Court to evidence liquidated damages is the Declaration of Plaintiff's corporate representative with authenticated exhibits attached thereto. The Court finds proper subject matter jurisdiction to hear and adjudicate Plaintiff's claims. The Court further finds that service of the Motion has been made upon the Defendants and that they have not responded to the Motion.

The Court finds that this civil action was commenced on May 24, 2022. The Court further finds that all Defendants were properly served with the Summons and Complaint in the Cincinnati

area on various dates between June 3, 2022 and June 15, 2022, and that the executed Returns of Service were filed with the Court (Doc. Nos. 16, 17, 18, 19 and 20).

Further, the Court finds that the Defendants have failed to answer, respond, or appear and, therefore, all the well-plead facts in the Complaint are taken as true and are conclusive. The Clerk's Entry of Default was entered on July 11, 2022 (Doc. No. 22). Plaintiff's Motion is therefore ripe for determination. Based on all the evidence before the Court, the Motion is GRANTED and Default Judgment is hereby rendered in favor of Plaintiff and against all Defendants, jointly and severally. Plaintiff is the prevailing party as to all causes of action asserted in the Complaint.

Further, the Court finds that sufficient evidence of damages has been presented, that damages are readily capable of mathematical computation and that a hearing is therefore not necessary. Principal damages are awarded as set forth in the Plaintiff's statement of account which is authenticated by the party's Declaration.

Further, the Court finds that Plaintiff has made a successful claim for pre-judgment interest based on express contractual language on the face of each invoice issued to the Defendants as a bargained term and condition of sale, and therefore, interest at the rate of 18% per annum from the due date of each unpaid invoice, shall be added to this Judgment.

Further, the Court finds that because Plaintiff asserted causes of action in the Complaint for dissipation / misappropriation of trust assets and breach of fiduciary duty under the Perishable Agricultural Commodities Act ("PACA"), 7 U.S.C. §499 et seq., wherein Plaintiff is a qualified and perfected PACA trust beneficiary, this Judgment is non-dischargeable in any of Defendants' subsequent bankruptcy proceedings pursuant to 11 U.S.C. §523(a).

It is therefore **ORDERED** and **ADJUDGED**:

That non-dischargeable Judgment is hereby rendered in favor of Plaintiff Castellini Company, LLC and against Defendants Pic's Produce, Inc., Joseph Pichichero, Jill Ellis, James Pichichero and Jeffrey Pichichero, jointly and severally, in the principal amount of \$31,639.76, plus pre-judgment interest of \$3,215.49 up to and including August 10, 2022 and continuing thereafter at the rate of \$15.60 per day until the entry date of this Judgment plus post-judgment interest pursuant to 28 U.S.C. §1961 at the current rate of 3.29% per annum;

That Defendants violated the PACA and the Code of Federal Regulations promulgated thereunder by failing to preserve the statutory trust for Plaintiff's benefit under PACA;

That Defendants, their agents, servants and employees are ordered to turn over to Plaintiff's counsel all proceeds of produce sales of Defendants, all accounts receivable generated by produce sales of Defendants, and all assets into which these proceeds have been commingled to the extent that Plaintiff is paid in full as required by 7 U.S.C. §499(e)(c)2;

That Plaintiff is granted leave to file a Motion for Attorney Fees within fourteen (14) days of entry of this Judgment; and

That there is no just reason for delay in entering this final Judgment for which sums let execution issue.

IT IS SO ORDERED.

Dated: _____ September 1, 2022

/s/ *Michael R. Barrett*

MICHAEL R. BARRETT
UNITED STATES DISTRICT JUDGE